What is a Contract?

A contract is an agreement between two or more parties which creates a legal obligation to perform (or not to perform) a duty. A legally enforceable contract requires:

1. An offer
2. An acceptance
3. Consideration
4. Capacity
What is a Contract?

Example:

- **Offer**: Joe tells David “I’ll mow your lawn on Saturday if you pay me $25.”
- **Acceptance**: David says “That sounds great. You’ve got a deal.”
- **Consideration**: the value received/given – one party mows the lawn in exchange for $25
- **Capacity**: exists as long as the parties are of legal age, sound mind, and have authority to contract (in cases of a company or organization)
Offer and Acceptance

Legally recognized offer and acceptance creates a ‘meeting of the minds’, or mutual assent between the parties.

Requirements:

- Contractual Intent
- Terms of offer must be clear and definite
  - Who, what, when, where, how much
- Acceptance must be clearly communicated
Consideration

- Bargained-for exchange
- Both parties must receive something of value
- Degree of value is generally not a legal issue
- Money is not a requirement
- Gifts are not contracts
Capacity

- Legal ability to enter into a contract
- Examples of individuals who cannot contract:
  - Minors
  - Mentally Impaired
  - Under the Influence
Does a contract need to be in writing?

**Answer:** It Depends!

- **Statute of Frauds:** Requires certain contracts be in writing and ‘signed by the party to be charged’
  - ... sale of real estate, lease of real estate longer than 1 year, agreement not to be performed within 1 year
  - ... sale of goods over $500

- **Enforceability:** Length of time parties can enforce rights under the agreement may vary; ‘proof’ or ‘evidence’ issues
Authority to Contract

- Corporations, LLC’s, and other business entities are generally considered separate legal entities, distinct from the people who work for or manage the corporation.

- A corporation has the legal capacity of an individual for the purpose of entering into contracts – ‘artificial person’.

- One way a corporation or company exercises this capacity is to grant contracting authority to an agent or individual.

- If a person has not been granted authority to contract for a corporation, a contract purportedly entered into by that corporation may be void.
Contract Execution: who can sign?

- Board of Regents delegates persons with signature authority to sign contracts.
- President of the University may from time-to-time delegate signature authority to persons for specific types of contracts only.
- Only these select people can sign contracts on behalf-of, and which bind, Baylor University.
- A person signing a contract without legal authority is subject to personal liability for that contract.
Negotiation & Management

- **Contract negotiation**: setting out the terms of the agreement - specific duties/obligations of both parties and how/when payments will be made

- **Contract management**: ensuring that both parties are performing as promised

- Persons in the departments are the only ones in position to negotiate the ‘business deal’ of a contract, and to ensure that the contract is managed appropriately

- The person who will manage the contract must be identified before the contract is requested.
Common Contract Clauses

- Indemnification
- Insurance Requirements
- Governing Law & Venue Provisions
- Nondiscrimination
**Indemnification Clause**

- **Indemnification**: One party in the contract is obligated to pay or compensate the other party for losses, damages, or liabilities incurred by that other party to the contract.

- **Typical Clause**: B agrees to indemnify, hold harmless, or defend A against all claims, actions, liabilities ..., and costs which arise out of, or relate to, any act or omission of B.

- **Translation/Example**: A rents a boat to B; B agrees to indemnify A against all claims, etc ... A gets sued by third party C for accident arising out of rental; B must indemnify/defend/hold harmless A.
Insurance Clauses

- One party in the contract is required or obligated by the other party to carry insurance covering the contract or event, and/or to provide a certificate of insurance.

- **Typical Clause**: A shall maintain and carry the appropriate levels of insurance and provide a certificate of insurance to B.
Insurance Clauses

Governance and Risk: [http://www.baylor.edu/gr/](http://www.baylor.edu/gr/)

Risk Management:
- Contract & Certificate of Insurance Management
- Insurance Programs
- Driving for Baylor
- Domestic & International Travel
- Special Events
Governing Law & Venue Provisions

- **Governing Law**: the laws of the jurisdiction (such as the states of the US) that will apply to the contract. This is important because different jurisdictions have differing laws that could affect the outcome of a dispute.

- **Venue**: the place in which a lawsuit may be filed or commenced. Venue is concerned with geographical location of filing the suit.

- **Typical Clause**: Any disputes arising out of this contract shall be governed and construed by the laws of the state of Texas. Any suits shall be brought in a court in McLennan County.
Antidiscrimination Clauses

- As a religiously-controlled institution of higher education, Baylor is entitled to discriminate on the basis of religion under the First Amendment of the Constitution, and specifically under Title VII of the Civil Rights Act of 1964.

- In addition, the U.S. Department of Education has granted Baylor a religious exemption from certain provisions of Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of gender. If Baylor is asked to agree not to discriminate on the basis of religion (which includes discrimination on the basis of sexual orientation), the contract must be revised.
Term & Termination

- **Term**: defines the period of time the agreement is effective
  - Example: March 9, 2017 to March 9, 2018

- **Termination**: circumstances of ending the contractual relationship
  - breach, change of control, insolvency
  - Many clauses require notice
Renewals and Amendments

**Renewal**: the creation of a new contract term after the expiration of the original agreement
- Could also be referred to as an “extension”
- Typical clause: This contract will automatically renew at the end of its term for one year periods for a total of 10 years, unless either party provides notice of intent to terminate not less than 30 days before the end of the then current term. (Evergreen clauses)

**Amendment**: addition, deletion, or change to a contract
- Addendums are another term for a form of an amendment
Contract Risks & Compliance Areas

Contracts involving:

- Special events or large gatherings
- Chemicals, substances, living organisms
- Insurance Requirements
- Imports/Exports
- Scientific Equipment purchases
- Health/Medical/Student/or other Personal Information
- Travel outside of the United States
- Foreign Nationals
- Restricted Research
- Tax Implications (for reporting purposes; no assigned reviewer)

These risk/compliance areas, if present in a contract, should be selected as a Risk Element in the Contract Request. Selected elements will be reviewed by the appropriate University employee at the request level, before the request is forwarded to the departmental Contract Manager.
Baylor Contract Types

- Acquisition of Goods
- Acquisition of Services
- Revenue-Generating
- Transportation or Lodging
- Facility Use Agreements
- Real Estate
- Other
Payments under Contracts

- Payments made under contracts are disallowed on the purchasing card.
- Proposed contracts should be submitted, reviewed, and signed through Total Contract Manager before submitting for payment.
- Requests to pay under contracts should reference the TCM contract number.
Total Contract Manager Workflow

**Request**
Contract Requester initiates contract request in TCM. ITS and/or Risk Reviews occur if applicable.

**Creation**
Contract Manager reviews request and creates Contract Record.

**Review**
Reviewers participate in internal review and editing (contract may be sent to second party for external review).

**Execution and Management**
Contract is executed by second party, then by Baylor. Executed contract stored in TCM and event notifications sent to Contract Managers.

**Approval**
Contract is approved by OGC and released to allow for e-signature set-up.
Contract Basics Learning Sessions

A brief overview of contract elements, common clauses, negotiation, signature authority, and procedures for Baylor University.

WHO: Baylor employees
WHAT: Contracts: The Basics
WHERE: Clifton Robinson Tower, Suite 200
       Human Resources Training Room
WHEN: June 27, 2017 at 10:30 am
       July 17, 2017 at 1:30 pm
       August 3, 2017 at 2:30 pm
HOW: Sign up to attend a session through BaylorCompass at baylor.edu/compass

Please contact Procurement Services for any additional information or questions.